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Remarks

Claims 1-3, 5-20, and 23-27 are pending in the application.

Claim Rejections under 35 U.S.C. §103(a)

The Office Action rejected claims 1-3, 5-7, 14-16 and 24 under 35 U.S.C. §103(a) as obvious over Cheeseman (CA 1197745). The Examiner cites Cheeseman to teach "a medical drape" comprising a backing layer having a first and second surface, where projecting from the first surface is an array of stems which are integrally formed with said backing layer. The Examiner recognizes that Cheeseman fails to disclose an aspect ratio of at least 1.25 or a dry static coefficient of friction of at least 0.6 but asserts that it would have been obvious to one skilled in the art based on optimization using routine experimentation.

Applicants respectfully traverse the rejection. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. In re Fine, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). To establish a *prima facie* case of obviousness, three criteria must be met. First, the prior art reference (or references) must teach or suggest all of the claim limitations. Second, there must be some suggestion or motivation, either in the cited reference (or references), or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Third, there must be a reasonable expectation of success. M.P.E.P. § 2142 (citations omitted).

Cheeseman discloses a "securing means" for attaching a medical drape and/or tubing to a patient – Cheeseman does not teach a construction for a medical drape. The securing means are provided to allow attachment of a drape or towel with the use of a clamp without piercing the drape or the body of the patient.

The Examiner fails to identify disclosure in Cheeseman to support the motivation to modify the securing means of Cheeseman into a medical drape. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure. See M.P.E.P. §706.02(j).

Moreover, the modification of Cheeseman to increase the size of the securing means and/or reduce the size of the protrusions (in an effort to form a drape as the Examiner suggests) would teach away from the disclosure and potentially destroy its

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functional aspects. The securing means of Cheeseman require a thickness and mechanical strength "to accommodate a clamping action thereagainst" by "the use of clamps or forceps." (Specification, page 5, lines 18-20; lines 21-23). The raised portions must be capable of clamping "without collapsing or otherwise being destroyed." (Specification, page 8, lines 3-12). The protrusions must also be large enough so that the surgeon may feel for the securing means through the drape or towel. If the securing means of Cheeseman were modified as the Examiner suggests, the resulting drape would not have protrusions with a thickness and mechanical strength "to accommodate a clamping action thereagainst" as taught by Cheeseman.

The Office Action further rejected claims 25-27 under 35 U.S.C. §103(a) as obvious over Cheeseman in view of Reeves et al. (US 5,491,015). The Office Action recognizes that Cheeseman fails to disclose an array with 15.5 to 1500 upstanding stems per cm² or a stem cross-sectional dimension as claimed but relies on Reeves for that disclosure.

As discussed above, there is no motivation to modify Cheeseman, and the combination of Reeves with Cheeseman does not address the deficiencies as identified above. Moreover, Reeves discloses a slip control article for use on equipment such as gymnastic equipment, and tools or sports equipment with leather grips, using protrusions made of a hard, durable material (such as polycarbonate) which are incompressible and non-collapsible (See, e.g., Col. 6, lines 30-50). Neither Cheeseman nor Reeves teach the elements of Appellants' claims, either alone or in combination. Appellants respectfully request this rejection be reversed.

Rejection based on Double Patenting

The Examiner has also rejected claims 1-3, 5-20, and 23-27 under the judicially created doctrine of obviousness-type double patenting over claims 1-34 of U.S. Patent No. 6,372,323. The Examiner has additionally rejected claims 1-3, 5-20, and 24-27 under the judicially created doctrine of obviousness-type double patenting over claims 1-29 of U.S. Patent No. 6,610,382. Applicants have provided terminal disclaimers in compliance with 37 CFR 1.321(c) to overcome the nonstatutory double patenting rejection.

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Conclusion

For at least the foregoing reasons, Applicants submit that the rejected claims are patentable over Reeves. Reconsideration and withdrawal of the rejections based on the above references are requested.

Respectfully submitted,

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